

D.T.E. 99-109

Petition of over twenty (20) customers requesting that Bell Atlantic - Massachusetts include the Boston exchange in the Somerville local calling area for Internet service purposes.

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APPEARANCES: John L. Conroy, Director

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FOR: NEW ENGLAND TELEPHONE &

TELEGRAPH COMPANY

d/b/a

BELL ATLANTIC - MASSACHUSETTS

## I. INTRODUCTION

On November 29, 1999, pursuant to G.L. c. 159, § 24, the Department of Telecommunications and Energy ("Department") received a petition from over twenty customers of the New England Telephone and Telegraph Company d/b/a Bell Atlantic - Massachusetts ("Company" or "Bell Atlantic") who are residents of the City of Somerville, requesting that the City of Boston be included in the primary calling area ("PCA") for Somerville customers.<sup>(1)</sup> The Somerville PCA currently consists of Cambridge, Charlestown, Everett, Somerville, Arlington, and Medford. The petition was docketed as D.T.E. 99-109. After due notice, the Department held a public hearing in Somerville on February 8, 1999. Two residents of Somerville testified at the hearing, as

did Somerville Alderman James Halloran, and State Representatives Vincent Ciampa and Timothy J. Toomey, Jr. (Tr. at 18-20). State Senator Charles E. Shannon, State Representative Patricia Jehlen, Representative Toomey, and Mr. Michael Sullivan filed written comments. On March 21, 2000, the Company filed the testimony of John Conroy, Director - Regulatory for Bell Atlantic. On April 27, 2000, City of Somerville Mayor Dorothy Kelly Gay filed comments.

## II. POSITIONS OF THE PARTIES

### A. Petitioners

At hearing, three residents of Somerville testified. Ms. Jadwiga T. Forbes testified that she is concerned that installation charges and rates are arbitrary (Tr. at 7-8).

Alderman Halloran testified that he believes it is unfair that the residents of Somerville must pay higher costs than their neighbors in Boston for an internet service providers ("ISPs") connection.<sup>(2)</sup> He believes that ISPs should offer Somerville residents two numbers within the PCA to access the Internet (Tr. at 9).

Mr. Sullivan testified that while America Online has added a second Internet access number in Somerville's PCA, other ISPs might not. If an ISP does not provide a secondary number within Somerville's PCA, Somerville residents must purchase Metropolitan Service from the Company or be charged toll rates to reach the ISP. Mr. Sullivan seeks a fair rate plan to cater to Internet use (id. at 12).

Representative Ciampa testified that it is difficult for his constituents to understand why they pay toll charges for calls to Boston when Somerville is in close proximity to Boston (id. at 19.) Representative Toomey stated that he believes it is unfair to place a tariff on calls from Somerville to Boston since Somerville actually borders Boston (id. at 21).

Senator Shannon and Representative Jehlen, in written comments, expressed support for the petition of the Somerville residents because Somerville borders Boston. Also by written comments, City of Somerville Mayor Kelly Gay supported the efforts of the petitioners because they seek to keep Internet access affordable.

### B. Bell Atlantic

Bell Atlantic stated that the existing local service configuration is consistent with statewide provisions of basic local telephone exchange service as established in New England Telephone and Telegraph Company, D.P.U. 89-300 (1990), and that the home and contiguous exchange standard configuration is, when considered objectively, a common and reasonable application of parity (Exh. BA-Ma-1, at 1). Additionally, the Company stated that it has taken action to reduce toll rates for all customers served by the Somerville exchange. The Company offers several optional toll calling plans to Somerville exchange customers. These plans include the following: Metropolitan Service, which allows Somerville residents to make Boston-based Internet connections

without toll charges; Bay State East Service Measured Circle Calling Service; Selective Calling Service; and, Eastern LATAwide Calling Plan (id. at 2). Bell Atlantic also notes that some ISPs make local numbers available for Somerville customers to access Internet services on a toll-free basis (id.; see also, Tr. at 12).

### III. STANDARD OF REVIEW

Under the provisions of G.L. c. 159, § 16, the Department may order Bell Atlantic to make changes in service when the Department finds such service to be "unjust, unreasonable, unsafe, improper, or inadequate." Before ordering changes, however, the Department must consider "the relative importance and necessity of the changes ..., the financial ability of the carrier to comply with the requirements of the order, and the effect of ... such other changes, if any, as may be deemed by the [D]epartment [to be] of equal or greater importance and necessity in the performance of the service which the carrier has professed to render to the public." G.L. c. 159, § 16.

In New England Telephone and Telegraph Company, the Department balanced customers' interests in expanding PCAs against the advantages of a comprehensive rate structure that was cost-based and fair, ensured rate continuity for customers and earnings stability for the Company, and protected universal service. New England Telephone and Telegraph Company, D.P.U. 89-300, at 64-72. The Department determined, after reviewing the relevant costs and balancing the Department's rate structure goals of fairness, rate continuity and protection of universal service, that a reasonable PCA would include the customer's home and contiguous exchanges. Id. at 69-70. The Department further concluded that expanding PCAs beyond the home and contiguous exchanges would "violate our goal of economic efficiency ... by including significant amounts of use that is properly priced at toll rates ... within the unlimited local service rate." Id. at 70. The Department also found that increasing the scope of PCAs could, "over time, push [local exchange] rates to much higher levels," which "could make the unlimited service option unaffordable to many customers and might, thus, pose problems for rate continuity." Id. The Department also noted that expansion of PCAs to permit toll-free calling on a county or region-wide basis would exacerbate existing disparities among PCAs and move the rate structure further from fair and consistent calling areas. Id. at 69-70.

The Department has relied on D.P.U. 89-300 when deciding PCA cases. See, e.g., Charlton, D.P.U. 95-88 (1997); Dennis, D.P.U. 95-35 (1996); Freetown,

D.P.U. 95-21 (1996); Southern Berkshire/Pittsfield, D.P.U. 90-277 (1992). In Southern Berkshire/Pittsfield, D.P.U. 90-277, at 7, the Department further noted that it was not reasonable or cost-effective to require Bell Atlantic to redesign exchanges solely for the purpose of matching the existing municipal boundaries.

The Supreme Judicial Court has addressed the PCA issue and held that the Department's PCA policy is not arbitrary and capricious simply because a PCA results in perceived inequities. Bosley v. Department of Public Utilities, 417 Mass. 510, 513 (1994). The

Court found that the Department's adoption of home and contiguous exchanges was a proper balance of customers' interest in expanding PCAs against the advantages of a comprehensive rate structure, earnings stability for Bell Atlantic, and protection of universal service. Id. The Court stated that the Department's proffered reason -- a comprehensive system and the over-all reduction in rates provided by that system -- amply justifies the Department's decision. Id. at 514. The Court also noted that the Department is better equipped to balance the competing interests in such cases and affords it substantial deference to do so. Id. at 513.

#### IV. ANALYSIS AND FINDINGS

In the present case, the petitioners seek to expand the Somerville PCA to include all exchanges in Boston. The Department has previously held that a PCA is determined by "home and contiguous" exchange boundaries, not "home and contiguous" municipal boundaries. New England Telephone and Telegraph Company, D.P.U. 89-300, at 52; see also, Southern Berkshire/Pittsfield, D.P.U. 90-277 (1990) (noting that it was not reasonable or cost-effective to require Bell Atlantic's predecessor, NYNEX, to redesign exchanges solely for the purpose of matching existing municipal boundaries). Somerville's home exchange consists of the Somerville exchange; Somerville's contiguous exchanges consist of the Cambridge, Charlestown, Everett, Arlington, and Medford exchanges.

The City of Boston exchanges, except for Charlestown, are not contiguous with the Somerville exchange. Under the "home and contiguous" standard, all Boston exchanges except the Charlestown exchange, are excluded from Somerville's PCA.

In arguing for an expansion of their PCA, the Petitioners raise arguments similar to those raised and rejected in the past -- that customers must make toll calls to reach certain nearby areas, especially metropolitan areas that offer services not obtained locally. Somerville Mayor Kelly Gay and Alderman Halloran support the petition with similar arguments. The Petitioners and their supporters, however, fail to distinguish the case before us from previous cases. As noted, Bell Atlantic offers optional toll calling plans to Somerville exchange customers that allow them to call Boston more economically than through measured toll service. These plans present a way to alleviate some of the rate hardships perceived by customers seeking expanded PCAs.

The petitioners and Alderman Halloran also complain that some ISPs do not offer multiple local access numbers. While it is unfortunate that certain Somerville residents do not have multiple local access numbers to reach their ISP, that situation is not Bell Atlantic's responsibility. Concerns over local access numbers offered by an ISP should be addressed to the ISP in question. Moreover, the record shows that some ISPs serving customers in the Somerville exchange do offer local access numbers (Tr. at 12).

Finally, Senator Shannon, Representative Ciampa, Representative Toomey, and Representative Jehlen express concern that Somerville residents pay a tariff on calls from Somerville to Boston although Somerville actually borders Boston (id. at 21). The "home

and contiguous" standard, however, requires contiguous exchange boundaries, not contiguous municipal boundaries. The only Boston exchange that is contiguous with the Somerville exchange is the Charlestown exchange. As noted above, the Charlestown exchange is within Somerville's PCA but all other Boston exchanges are not included.

Accordingly, the Department finds that a change in the existing framework would disrupt the Department's goals of economic efficiency, fairness, simplicity, and consistency in the statewide concept of PCAs as defined in New England Telephone and Telegraph Company, D.P.U. 89-300 (1990). Moreover, the availability of optional toll calling plans lessens the rate impacts created by PCA boundaries. Adherence to the Department's "home and contiguous" exchanges precedent results in reasoned consistency. Departure from precedent cannot be done in a principled manner. Therefore, the Department finds that the exclusion of Boston's exchanges, except for Charlestown's, from the Somerville PCA is consistent with the Department's long-standing "home and contiguous" standard, and is just, reasonable, proper, and adequate pursuant to G.L. c. 159, § 16.

#### V. ORDER

Accordingly, after due notice, hearing and consideration, it is

ORDERED: That the Petition filed on November 29, 1999, by over twenty (20) customers of Bell Atlantic in Somerville and supported by the Board of Selectmen of the City of Somerville, requesting that the Company include Boston as one of the exchanges that Somerville residents are able to call toll-free is hereby denied.

By Order of the Department,

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James Connelly, Chairman

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W. Robert Keating, Commissioner

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Eugene J. Sullivan, Jr., Commissioner

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Paul B. Vasington, Commissioner

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Deirdre K. Manning, Commissioner

Appeal as to matters of law from any final decision, order or ruling of the Commission may be taken to the Supreme Judicial Court by an aggrieved party in interest by the filing of a written petition praying that the Order of the Commission be modified or set aside in whole or in part.

Such petition for appeal shall be filed with the Secretary of the Commission within twenty days after the date of service of the decision, order or ruling of the Commission, or within such further time as the Commission may allow upon request filed prior to the expiration of twenty days after the date of service of said decision, order or ruling. Within ten days after such petition has been filed, the appealing party shall enter the appeal in the Supreme Judicial Court sitting in Suffolk County by filing a copy thereof with the Clerk of said Court. (Sec. 5, Chapter 25, G.L. Ter. Ed., as most recently amended by Chapter 485 of the Acts of 1971).

1. The PCA for any particular Bell Atlantic exchange is defined as all exchanges that a customer who subscribes to basic unlimited service can call without incurring a

usage (toll or local per-message/per-minute) charge. New England Telephone and Telegraph Company, D.P.U. 89-300, at 52 (1990). A PCA is determined by "home and contiguous" exchange boundaries, not "home and contiguous" municipal boundaries (see discussion in Section IV). A telephone exchange is a geographic unit established for the administration of telecommunications service in a specific area. Generally, it consists of one or more central switching offices, the associated wire, and cable plant used in furnishing telephone service within that area. Dennis, D.T.E. 95-35, at 1 n. 2 (1996).

2. Subscribers to ISPs dial a phone number to connect to the provider and are then able to access all the features of the provider including e-mail and Internet access. Dennis, D.T.E. 96-50, at 2 n.3.